



March 26, 2001

Ms. Stacy Tuer Castillo  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246-0606

OR2001-1171

Dear Ms. Castillo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145286.

The Southside Independent School District (the “district”) received two separate requests for a videotape of a student theatrical performance and one request for the identities of the individuals who accused a specific teacher of misconduct. You have submitted a copy of the videotape in question and the district’s two-page written summary of the accusers’ complaints. You claim that the submitted information is excepted from disclosure under sections 552.026, 552.114, and 552.131 of the Government Code and section 552.101 of the Government Code in conjunction with the Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 U.S.C. § 1232g. We have considered the exceptions you claim and reviewed the submitted information.

First, we address the videotape. You contend that it is protected from disclosure under sections 552.026 and 552.114 and under section 552.101 in conjunction with FERPA. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student’s parent. *See* 20 U.S.C. § 1232g(b)(1). “Education records” means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978).

You state that "the information requested constitutes non-directory 'personally identifiable' student information." In this instance, we believe that the release of the videotape would tend to reveal the identities of particular students. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information" as information that would make the student's identity easily traceable). You have not informed us whether the students' parents have consented to its release or whether the district has designated the videotape as directory information. Therefore, we conclude that you must withhold the videotape under section 552.101 of the Government Code in conjunction with FERPA.

Next, we address the district's summary of the accusers' complaints, which you have submitted as Exhibit C. We do not find any of the accusers' identities in that document. Because the request specifically asked for the identities of the accusers, the submitted summary is not responsive to the request. *See generally* Gov't Code § 552.301 (governmental body must, among other things, submit a copy of the specific information requested). Therefore, the district need not release Exhibit C in response to this request.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen P. Agar", is written over a horizontal line.

Stephen P. Agar  
Assistant Attorney General  
Open Records Division

SPA/seg

Ref: ID# 145286

Encl. Submitted videotape and documents

cc: Mr. Martin Dreiss  
Southside High School  
1460 Martinez-Losoya Road  
San Antonio, Texas 78221-9613  
(w/o enclosures)

Mr. Jose De Hoyos  
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